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North American producers of particleboard, MDF, hardboard and other compatible products.

February 15, 2008

BY ELECTRONIC SUBMISSION

Ms. Lori Andreoni
Clerk of the Board
Air Resources Board
1001 I Street
P.O. Box 2815
Sacramento, CA 95814

Dear Ms. Andreoni:

RE: Proposed Amendments to the Air Toxic Control Measure ("ATCM") for Formaldehyde Emissions from Composite Wood Products

These comments are submitted by the Composite Panel Association ("CPA") in response to the 15-day Notice of Modified Regulatory Language for the referenced ATCM issued on January 31, 2008. CPA represents the North American composite panel industry. Our general membership includes 95% of the producers of particleboard, MDF and hardboard in North America and our associate membership includes companies that fabricate products on these platforms -- our entire membership has a direct stake in this proposed regulation.

CPA has worked cooperatively and diligently with the CARB staff to assist in the development of a rule that meets the requirements of the underlying statutes, but is also technologically and economically feasible and subject to even-handed enforcement. In general, CPA supports the proposed changes to the April 26, 2007 rule. Improvements have been made in the areas of definitions, rule language, third party certification, treatment of ultra low emitting and/or non-UF products, and enforcement. We are also appreciative that CARB staff has been responsive to industry's concerns in developing the proposed amendments.

We respectfully submit, however, that a few problematic areas remain and that some of the new language could present unintended difficulties:

1. Appendix 1 Sections (b)(2), (c)(2) and (d)(1). Sell-Through Deadline for Distributors and Importers of Finished Goods and Fabricators

CPA respectfully requests that the sell-through period for distributors, importers and fabricators of finished goods be established at twelve months rather than the eighteen months in the proposed Amendments. There was a disparity in the early drafts of the ATCM in the treatment of domestic versus imported products. Domestic distributors and fabricators of finished goods had 12 months for sell through and importers had 18 months. CPA and others

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pointed out that this would have resulted in an unfair advantage for the importers which would likely have resulted in "dumping" of non-complying imported products during the extra six-month period.

We were pleased that CARB unified the treatment of these categories in the April 26 rule, but we submit that eighteen months is more than is needed for inventory management, particularly given the lead-times on the underlying effective dates for manufacturing. Because the sell-through periods are times of natural transition, it will be extremely difficult for enforcement officials to determine whether a particular non-compliant finished good is the result of an allowable sale from inventory or an unscrupulous manufacturer choosing to ignore the regulation's requirements and seeking advantage during the transition period. It is therefore in the best interest of both the people of California and the composite panel industry to move as quickly as possible to the point at which full, fair and effective enforcement of the regulation can begin. Twelve months should provide more than enough time for planning, inventory management and supply chain adjustment.

We also note that a twelve-month sell through period would be more compatible with other deadlines in the ATCM. Appendix 1, Section (e)(2) provides a sell-through period of eighteen months for retailers. By definition, retailers need a longer period than distributors, fabricators and importers. If a distributor sold finished goods at the very end of the eighteen month time period allowed, the goods could not be sold at retail in any event because of the coincident time limits. A change to twelve months for fabricators, importers and distributors would bring about a reasonable logic to the sell-through dates in the supply chain. Composite wood products manufacturers and importers would get a 3 month sell-through period; composite wood products distributors would have 5 months to sell-through; fabricators, their distributors and importers of finished goods would have 12 months; and retailers would have 18 months.

In an industry where there is fairly quick turnover of inventory, an 18-month fabricator sell-through period could place California composite manufacturers, in particular, at a disadvantage. For example, a manufacturer supplying thin MDF to a laminate flooring business would be required to meet the Phase 2 standard by January 1, 2012. However, the laminate flooring fabricator would have until July 1, 2014 to change their California inventory over from Phase 1 core products. The March 9, 2007 CARB Staff Report estimates that the cost of production will rise as much as 35% between the compliance requirements of Phase 1 and Phase 2. Cost increases of that magnitude will encourage fabricators to stockpile non-compliant inventory and produce from that inventory as long as the sell-through provision will allow. In that situation California composite manufacturers could find themselves with customers that don't have to purchase any new panels from them for up to 18 months. A reduction of the fabricator sell through time from 18 to 12 months would help to minimize this kind of impact to California composite manufacturers.

2. <u>Timelines and Testing Requirements for ULEF/NAF Products</u>

CPA concurs with the addition of special provisions for manufacturers of composite wood products using ultra-low-emitting formaldehyde ("ULEF") resins set forth in Section 93120.3(d) of the proposal. However, looking at the deadline calendar and in consideration of the ULEF approval requirements, it will be very difficult for manufacturers to receive approval before the first relevant deadline for Phase 1 of the rule, January 1, 2009. If the rule is filed with the Office of Administrative Law on the March 8th deadline, OAL has 45 days before the regulation gets its final approval. CARB cannot take official action regarding the rule until that point, so an important next step, accreditation of Third Party certification agencies, may not occur until at least April 22nd. The executive officer has 45 days to approve an application from a third party certifier. So, even if an agency filed its application immediately, it might not get approval until June 6th. ULEF manufacturers need to work with an approved third party agency to collect six months of quality data and conduct two 'quarterly' compliance tests, presumably three months apart. It would be early December 2007 before a ULEF manufacturer could submit an application for approval, after which the executive officer has 45 days to respond to the application. So, even with zero allowance time for data analysis, unanticipated problems and normal human delays, the ULEF manufacturer could not feasibly receive approval before January 1, 2009.

CPA has three suggestions that could resolve this potential bottleneck. First, grant 'provisional' ULEF approval based on the completion of a primary or secondary compliance test by a third party agency prior to December 31, 2008. Second, shorten the quality control test requirement period to 3 months, matching the requirement for No Added Formaldehyde (NAF) products. Third, require that the full data set of information be submitted for final evaluation and approval within a year of receiving provisional approval. If these suggestions are accepted, similar treatment should also be given to NAF applicants.

A secondary issue relating to both ULEF and NAF product manufacturers preparing an application for approval regards the frequency of testing for the development of a quality control data set. Testing frequency for ULEF/NAF products is not set forth in Appendix 2 as it is for composite wood products requiring third party certification. Further, manufacturers of ULEF/NAF products do not typically perform routine quality control tests for emissions, so there is no standard or standard operating practice to guide the selection of a testing frequency. CPA believes that excessive sampling is unnecessary to prove that emissions from these products are very low. We believe quality control testing frequency should be no more often than once per week per production line or once with every new lot of purchased adhesive, whichever is less frequent, as long as at least 6-10 data points are developed.

3. Section 93120.7. <u>Regulation of "Laminated Products"</u>

CARB has eliminated the old definition of "architectural hardwood plywood" and inserted in its place provisions for laminated products – "… a finished good or component part of a finished good made by a fabricator in which a laminate or laminates are affixed to a platform." Section 93120.1(25). Although we believe that the concept is sound to accommodate furniture makers and laminators who add a veneer or laminate to a substrate, there are four potential problems in the way in which the change has been implemented in Section 93120.7:

A. New Section 93120.7(a)(2) provides: “Fabricators that are also producers of laminated products do not need to comply with the manufacturer requirements regarding third party certification in section 93120.3(b).” The first problem is one of drafting. The definition of fabricator in Section 93120.1(12) already includes "…producers of laminated products…" The reference to both in the new section is superfluous and potentially confusing.

B. A more substantive problem is embodied in the new section, however. If lamination is being conducted by the same company that produced the platform, the literal language of Section 93120.7(a) would make the underlying production of the substrate exempt from third party certification. This is a huge loop hole. A manufacturer of particleboard or MDF would only have to add some minor veneer or covering to avoid all of the rigors of the third party certification. We believe that it has always been the intent that captive production of panel products by fabricators would be subject to third party certification.

C. Even if one were to favor the exemption from third party certification, the language as drafted is overly broad. The exemption does not relate to the substrates that are actually laminated. The literal language states that if a fabricator is also a producer of laminated products, they don’t need to comply with third party certification. The exemption is not limited to the specific substrate that is being laminated – there is a blanket exemption to the company. Again, this is an unintended, but huge, loop hole.

D. There is a contradiction between 93120.7(a)(2) and (a)(4). On the one hand it says that fabricators that laminate need not have third party certification; on the other hand there is reference to the fact that fabricators must comply with all manufacturer requirements except labeling. It should be clarified that Subsection 2 does not apply in situations in which the fabricator also manufactures the substrate.

We suggest the following language for section 93120.7:

(a) Requirements

(1) Except as provided in the “sell-through” provisions of section 93120.12, Appendix 1, all fabricators must comply with the requirements of section 93120.2(a) for all composite wood products and finished goods containing these materials that are sold, supplied, offered for sale, or purchased for sale in California.

(2) If the platform used by a fabricator to produce a laminated product consists of a composite wood product, the platform must comply with the applicable emission standards specified in section 93120.2(a).

(3) Fabricators manufacturing composite wood products must comply with all the requirements of section 93120.3; provided, however that composite wood products used exclusively for use by the fabricator in making finished goods need not be labeled pursuant to section 93120.3(e). Third party certification requirements of section 93120.3(b) apply to the composite wood products, not to laminated products or other finished goods made by the fabricator.

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4. Section 93120.1(15). Definition of "Finished Goods" – Component Parts.

The current notice adds the following language: "Component parts are not 'finished goods.'" A potential problem could arise in the situation in which panels are sent to a separate facility for the production of furniture or cabinet components. As a result of the proposed change, such a facility would neither be a manufacturer of composite wood products (which are defined as "panels") nor a fabricator of finished goods. Hence, it would have no responsibilities as a manufacturer and no responsibilities as a fabricator. The chain of custody would be broken.

We suggest that this sentence be eliminated. The original approach would not put any untoward burden on facilities making component parts for shipment to other fabricating facilities. Nor would it burden fabricators who create component parts and incorporate them into finished goods in the same facility. In this latter situation, no labeling would be required.

5. Implementation Schedule

CPA recognizes that a great deal of effort has been expended in clarifying and perfecting the ATCM since its adoption in April of last year and that this has necessarily been given priority. However, there are at least two areas that require immediate attention if there is to be smooth implementation of the rule: accreditation of third party certification programs and the completion of an enforcement testing protocol for rule compliance. CPA has already begun to receive requests for certification from composite wood products manufacturers who are in turn receiving requests from their customers. However, until CARB accredits third party certification agencies, no work can proceed. It is therefore critical to the affected industries that the accreditation of third party certification programs and the completion of an enforcement testing protocol for rule compliance be finalized no later than the end of the second quarter of 2008.

6. Appendix 2(f)(3)(A). Frequency of Chamber Tests

CPA submits that there is an unnecessarily large number of chamber tests required in the ATCM. The current Formaldehyde Grademark Program specifies at least one large chamber (randomly sampled) quarterly from each plant. The CARB regulation at Appendix 2(f)(3)(A) states: "[a]t least quarterly, a primary or secondary test shall be conducted on randomly selected samples of each product type, as determined by the third party certifier." If a plant elected to separate its production into more than one product type, it would be subject to quarterly tests on each product type at considerable expense. The daily quality control tests collected every eight to twelve hours will verify that the plant is in control; it should not be necessary to collect more than one quarterly test (randomly sampled) from each plant.

7. Clarifying Language

We believe that several clarifications should be made in the following sections to more closely reflect common practice and the intent of the ATCM:

A. Section 93120.9(a) (2)(A). The second sentence should read: "In addition, when testing panels the secondary method shall be operated by testing nine specimens representing evenly distributed portions of an entire panel ***or set of panels selected for verification***."

B. Section 93120.9(a)(2)(B)(2.). The first sentence should read: "For the secondary method, each comparison sample shall consist of testing nine specimens representing evenly distributed portions of an entire panel ***or set of panels selected for verification***."

C. Appendix 2(a). The note at the end of the second paragraph should read: "Note: All panels must be tested in an unfinished condition, prior to application of a ***laminate, finish*** or topcoat."

In summary, the amendments proposed on January 31, 2008 represent positive progress in the development of this ATCM. We submit that the modifications which are suggested above, although critically important, are within the authority of the Board to implement in this supplementary stage. CPA will continue to work with the Board and its staff to assure a smooth implementation of the ATCM and a rigorous and fair enforcement program.

Sincerely,

Thomas A. Julia
President